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9 Attorney for Timothy W. Hoffman, Chapter 7 Trustee

10 UNITED STATES BANKRUPTCY COURT  
11  
12 NORTHERN DISTRICT OF CALIFORNIA

13 In Re Case No. 21-30770-HLB  
14 (Chapter 7)

15 WESTMORE PROPERTIES, LLC,

16 Debtor.  
17 \_\_\_\_\_ /

18 **EX PARTE APPLICATION TO VACATE FINAL DECREE,**  
19 **AND DECLARATION IN SUPPORT THEREOF**

20 Timothy W. Hoffman, Chapter 7 trustee (the "Trustee") for the estate of  
21 Westmore Properties, LLC (the "Debtor"), shows as follows:

22 1. The Debtor filed a Voluntary Petition for relief under Chapter 7 on  
23 November 22, 2021. The Trustee has been appointed Chapter 7 trustee for the Debtor's  
24 estate.

25 2. The meeting of creditors was scheduled for January 6, 2022. On January  
26 4, 2022, the Debtor filed an amended Statement of Financial Affairs (Docket No. 9). The  
27 amended Statement of Financial Affairs included the following changes:

28 a. \$26,400 of 2019 income was removed from item 1.

a. A \$10,000 payment to Meyers Law Group on November 8, 2021, was  
added to item 11, with a notation the payment was returned to the debtor  
on November 12, 2021.

c. Staging furniture stored off premises was added to item 20.

3. The meeting of creditors was held and concluded on January 6, 2022. No  
corrections or errors in the Debtor's petition papers were brought to the Trustee's

**EX PARTE APPLICATION TO VACATE FINAL DECREE,**  
**AND DECLARATION IN SUPPORT THEREOF - Page 1**

1 attention.

2 4. On January 13, 2022, the Debtor again amended its Statement of Financial  
3 Affairs (Docket No. 10). This amendment included the following changes:

4 a. 2019 income was added back into item 1.

5 b. Payments to Murphy, Pearson within the preference period were added to  
6 item 3, and payments to Steven Hanson within the insider preference  
7 period were added to item 4 and item 30.

8 c. Transfers to the Debtor's members in September 2020 aggregating over  
9 \$1,500,000 were added to item 13.

10 5. The Trustee had not reviewed the January 13 amended Statement of  
11 Financial Affairs when he prepared his report of no distribution on January 14. Due to a  
12 technical glitch, the Trustee's report of no distribution was not docketed until January 18,  
13 the next Court date after January 14.

14 6. On January 18, 2022, the clerk entered the Court's Final Decree (Docket  
15 No. 11) discharging the Trustee and closing the Debtor's case.

16 7. Based upon the information contained in the January 13 amended  
17 Statement of Financial Affairs, which the Trustee did not review before he submitted his  
18 report of no distribution, the Trustee believes the estate may have some viable avoidance  
19 claims.

20 8. Federal Rule of Civil Procedure 60(b), incorporated into this case pursuant  
21 to Federal Rule of Bankruptcy Procedure 9024, authorizes the Court to vacate the order  
22 closing a bankruptcy case when the order was issued pursuant to mistake, inadvertence,  
23 surprise, excusable neglect, newly discovered evidence, or any other reason that justifies  
24 relief. *See, e.g., LPP Mortgage, Ltd. v. Brinley*, 547 F.3d 643, 649-51 (6<sup>th</sup> Cir. 2008).

25 WHEREFORE, the Trustee prays for an order:

26 1. Vacating the January 18, 2022, Final Decree, thereby canceling the  
27 discharge of the Trustee and the closure of the Debtor's case; and

28 2. Granting the Applicant such other and further relief, at law or in equity, to

**EX PARTE APPLICATION TO VACATE FINAL DECREE,  
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1 which he may be justly entitled.

2 Dated: January 25, 2022

BLUESTONE FAIRCLOTH & OLSON, LLP

3 /S/ Steven M. Olson

4 By: \_\_\_\_\_

Steven M. Olson

ATTORNEY FOR TRUSTEE

7 **DECLARATION OF TIMOTHY W. HOFFMAN**

8 I, Timothy W. Hoffman, declare:

9 1. I am over eighteen (18) years old, have personal knowledge of, and am  
10 competent to testify as to the matters set forth hereinbelow.

11 2. I was appointed chapter 7 trustee for the estate of Westmore Properties,  
12 LLC, in the above-captioned case.

13 3. I have reviewed the factual assertions set forth hereinabove in my Ex Parte  
14 Application to Vacate Final Decree. The factual assertions are true and correct, to the  
15 best of my information and knowledge.

16 I declare under penalty of perjury under the laws of the United States and of the  
17 State of California that the foregoing is true and correct.

18 DATED: January 25, 2022

/S/ Timothy W. Hoffman, Trustee

19 By: \_\_\_\_\_  
Timothy W. Hoffman, Trustee

1 **CERTIFICATE OF SERVICE**

2 I reside in the County of Sonoma, State of California. I am over the age of 18  
3 years and not a party to the within action. My business address is Bluestone Faircloth &  
Olson, LLP, 1825 4<sup>th</sup> Street, Santa Rosa, CA 95404.

4 On January 25, 2022, I served the within

5 **EX PARTE APPLICATION TO VACATE FINAL DECREE,**  
6 **AND DECLARATION IN SUPPORT THEREOF**

7 on the parties listed on the attached Service List. I served such parties in the manner  
described as follows:

8 /X/ (BY MAIL) I placed a copy of the document in sealed envelopes, with postage  
9 thereon fully prepaid for First Class Mail, addressed to such parties as have mailing  
addresses set forth on the attached Service List, for collection and mailing at Santa Rosa,  
10 California, following ordinary business practices. Because I did so after the end of the  
business day, the envelope will be picked up by the U.S. Postal Service on January 26,  
2022, pursuant to the regular practices of Bluestone Faircloth & Olson, LLP.

11 / / (BY PERSONAL SERVICE) I caused the document to be delivered by hand to the  
12 address(es) noted on the attached Service List.

13 / / (BY FACSIMILE) I caused the document to be transmitted by facsimile machine to  
14 such parties as have facsimile numbers set forth on the attached Service List.

15 / / (BY EMAIL) I caused the document to be transmitted by Email to such parties as  
have Email addresses set forth on the attached Service List.

16 I declare under penalty of perjury, under the laws of the United States and of the  
17 State of California, that the foregoing is true and correct. Executed at Santa Rosa,  
California, on January 25, 2022.

18 By: /S/ Steven M. Olson  
19 Steven M. Olson

20 **SERVICE LIST**

21 **U.S. Trustee**

22 Timothy S. Laffredi  
Assistant United States Trustee  
23 Office of the United States Trustee  
Phillip J. Burton Federal Building  
24 450 Golden Gate Ave. 5th Fl., #05-0153  
San Francisco, CA 94102

**Debtor**

Westmore Properties, LLC  
P.O. Box 509  
San Geronimo, CA 94963-0509